

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

JEREMIAH W. (JAY) NIXON,)	
Attorney General of)	
The State of Missouri,)	
)	
Plaintiff,)	
)	Cause No:
vs.)	
)	Division:
JAMES M. HIBBITS)	
)	
Serve at: 13850 Invicta Drive)	
Florissant, Missouri 63034)	
)	
and)	
)	
Michael J. LEBB)	
)	
Serve at: 618 Forest Court)	
Clayton, Missouri 63105)	
)	
Defendants.)	

PETITION FOR EQUITABLE RELIEF, RESTITUTION,
CIVIL PENALTIES AND OTHER RELIEF

Plaintiff, the Attorney General of the State of Missouri, Jeremiah W. (Jay) Nixon,
in his official capacity, by his Assistant Attorneys General Erwin O. Switzer, III, and
Robert S. Kenney, states the following:

INTRODUCTION

1. Defendants James M. Hibbits and Michael J. Lebb were the sole owners of and lead officers of Linuxgruven.com, Inc. (“Linuxgruven”). Linuxgruven sold computer training courses under the guise of offering employment at Linuxgruven. Hibbits and Lebb, through Linuxgruven employees and agents, concealed material facts in connection with the sales of the Linuxgruven training courses, including the following: (1) the person who was held out to be a human resources interviewer for an employment position was actually a commissioned salesperson, whose pay was based largely or entirely on the number of persons who signed up and paid tuition for the training course, and (2) most students who took the course would not “pass” the test that was the alleged precondition to employment. As a result of deception, concealment of material facts, and unfair practices, hundreds of consumers paid tuition, usually in the amount of \$2,500 or \$3,150, under false pretenses. Defendants have failed to provide refunds of tuition payments requested by many consumers.

2. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to his common law, constitutional, and statutory authority, including but not limited to Chapters 27 and 407 of the Missouri Revised Statutes (as amended), and regulations

promulgated thereunder.¹ Erwin O. Switzer, III, and Robert S. Kenney are duly appointed, qualified and acting Assistant Attorneys General.

3. Linuxgruven was a Missouri corporation with its principal place of business in Missouri. It was incorporated in February 2000. It is no longer in good standing with the Missouri Secretary of State and is not operating as a business in Missouri.

Linuxgruven is not a named defendant in this case.

4. James M. Hibbits is a natural person who is a resident of St. Louis County, Missouri. Hibbits owned 51 percent of Linuxgruven. He was the President of Linuxgruven until at least January 1, 2001, and remained the 51 percent owner thereafter.

5. Michael J. Lebb is a natural person who is a resident of St. Louis County, Missouri. Lebb owned 49 percent of Linuxgruven. He was the Executive Vice-President of Linuxgruven until at least January 1, 2001, and remained the 49 percent owner thereafter.

JURISDICTION AND VENUE

6. Section 407.100.1-3 provides:

1. Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts,

¹Unless otherwise indicated, all statutory references are to Missouri Revised Statutes (2000), as presently amended.

uses, practices or solicitations or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from this state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

7. This Court has jurisdiction over the subject matter of this action pursuant to Chapters 27 and 407 of the Missouri Revised Statutes (as amended), and Article V of the Missouri Constitution.

8. This Court has personal jurisdiction over each of the Defendants pursuant to Mo. Rev. Stat. § 506.500.

9. Venue lies in the Circuit Court of St. Louis County in that both defendants reside in St. Louis County and the violations of the Missouri Merchandising Practices Act described herein occurred, among other places, in St. Louis County in the State of Missouri. Mo. Rev. Stat. § 407.100.7.

THE MISSOURI MERCHANDISING PRACTICES ACT

10. Section 407.020 provides, in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

* * *

Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

11. Section 407.010(6) defines “sale” as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.”

12. Section 407.010(1) defines “advertisement” as “the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.”

13. Section 407.010(4) defines “merchandise” as any “objects, wares, goods, commodities, intangibles, real estate or services.”

14. Section 407.010(7) defines “trade” or “commerce” as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article,

commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

DEFENDANTS' TRADE PRACTICES

15. Defendants Hibbits and Lebb caused Linuxgruven, through its employees and agents, to engage in the act, use, and employment of deception and unfair practice, and the concealment, suppression, and omission of material facts to induce consumers to enroll in Linuxgruven's "Linuxgruven LCA [Linuxgruven Certified Administrator] certification preparation course" and prepay tuition in the amount of \$2500 or \$3150. Linuxgruven employees used the tactics set forth below.

16. Linuxgruven placed advertisements in the "help wanted" portion of the classified advertising section of the St. Louis Post-Dispatch, the Kansas City Star, and other newspapers in Cincinnati, Chicago and elsewhere around the United States advertising positions for network engineers at Linuxgruven. These purported employment advertisements read "training available for qualified applicants." Typical advertisements are attached here as Exhibit A.

17. Hibbits and Lebb were responsible for the creation of the concept and the content of the advertisements, at least through January 1, 2001.

18. The business plan for Linuxgruven created by Hibbits and Lebb called for developing the training program as a profit center.

19. A purpose of the training program created by Hibbits and Lebb for Linuxgruven was to generate income for Linuxgruven from persons Linuxgruven would not hire, and was not merely limited to training persons to become employees for Linuxgruven.

20. Most of Linuxgruven's revenues came from sales of the training classes.

21. The purported employment advertisements concealed, suppressed, and omitted the material facts that (a) the training was not free, but cost \$2500, an amount raised to \$3150 in 2001, (b) the training was not limited to persons who were "qualified applicants" in the sense that the applicants had qualities that were likely to lead to them being hired, but the overwhelming majority (80 percent or more) of the persons who paid for and took the training were deemed by Linuxgruven to be not qualified to be hired by Linuxgruven, and (c) notwithstanding the fact that the advertisements were placed in the "employment" section of the classified advertising pages, at least one purpose, if not the dominant purpose, of the advertisement was to induce persons to interview with Linuxgruven so that the interviewees would enroll in and pay for the training course, regardless of whether that person or most persons who paid the tuition would ultimately be hired by Linuxgruven or deemed by Linuxgruven to be eligible for hiring by Linuxgruven.

22. Persons who responded to the advertisement met with an interviewer for Linuxgruven. To the interviewee, it appeared that the interviewer was a human resources

employee of Linuxgruven conducting the interview for the sole purpose of obtaining employees for Linuxgruven.

23. In fact, the Linuxgruven interviewers were commissioned salespersons paid in whole or in part based on how many interviewees or applicants the interviewer caused to enroll in and pay tuition for the Linuxgruven training course.

24. The compensation for the Linuxgruven interviewers was not affected by whether the applicant was ultimately hired by Linuxgruven, but only whether the applicant paid the tuition.

25. Hibbits and Lebb decided on the pay structure for the interviewers, including the decision to base the interviewers' commission on the number of persons who paid tuition for the training course. The interviewers' commission was not based on whether the persons who took the training course were ultimately hired by Linuxgruven or whether Linuxgruven deemed these persons to be eligible for employment at Linuxgruven.

26. During the course of the interview, the interviewer concealed the facts that: (a) the training was not limited to persons who were "qualified applicants" in the sense that the applicants had qualities that were likely to lead to them being hired, but the overwhelming majority (80 percent or more) of the persons who paid for and took the training were deemed by Linuxgruven to be not qualified to be hired by Linuxgruven, (b) at least one purpose, if not the dominant purpose, of the "interview" was to induce

persons to enroll in and pay for the training course, rather than to seek out persons to be hired by Linuxgruven, and (c) the interviewer was a commissioned salesperson paid in whole or in part based on how many interviewees or applicants the interviewer caused to enroll in and pay tuition for the Linuxgruven training course, and the compensation for the interviewer was not affected by whether the applicant was ultimately hired by Linuxgruven but only whether the applicant paid the tuition.

27. Hibbits and Lebb were involved in deciding what would be discussed in the interviews of the prospective applicants or students.

28. Hibbits and Lebb were aware of the fact that the interviewers concealed or did not reveal the above-described facts during interviews and were responsible for the concealment of those facts.

29. To further induce applicants to enroll in the Linuxgruven training course, during or after the interview the interviewer gave applicants a document typically entitled “Network Engineer Offer of Employment” or “Linux Certified Administrator Offer of Employment” or similarly-titled document. The “offer” promised the applicant a job at Linuxgruven at \$45,000 per year and a refund of the Linuxgruven course tuition after 12 months of continuous employment if the applicant passed Linux Certified Administrator exams. This “Offer of Employment” further stated that “We look forward to a long and successful association with you.”

30. Some of the documents that were entitled “Offer of Employment” were signed by Lebb. Most or all of those documents that were not actually signed by Lebb were substantially similar to the ones signed by Lebb.

31. Hibbits approved of the form of the “Offer of Employment” or similarly-titled documents.

32. The pass rate among applicants on the Linux Certified Administrator tests was very low. The overall pass rate was often less than 20 percent, and at times it was substantially less than 20 percent.

33. Linuxgruven revised its certification test, at the direction of Hibbits, from time to time, with the revisions making the test harder. Prospective students were not told that the test was being revised to make it harder.

34. Neither the interviewers nor anyone else at Linuxgruven revealed the fact that Linuxgruven did not look forward to “a long and successful association” with most applicants, but rather expected the only contractual relationship that most persons signing the “Offer of Employment” would have with Linuxgruven was paying Linuxgruven for the training course, as shown by the fact that only a small percentage of the persons to whom the “Offer of Employment” was tendered were deemed by Linuxgruven to be eligible for employment with Linuxgruven.

35. During the interview, applicants were given an "aptitude test."

36. Few, if any, persons who were willing to pay the tuition fee were told by Linuxgruven that they were not likely to be found qualified and hired by Linuxgruven, despite the fact that Linuxgruven knew that it would deem most of the applicants not qualified for hiring by Linuxgruven.

37. Some of the aptitude tests were sent to Lebb, and Hibbits and Lebb did not notify applicants or cause any applicants to be notified that they were not likely to be hired by Linuxgruven.

38. In March 2001, Linuxgruven stopped business operations. At that time, there were consumers who had paid the tuition who had not taken the test, completed the course, or in some cases even started the course.

39. Hibbits and Lebb shared responsibility for “training sales,” that is, selling the training course for which the tuition was paid.

40. Because of the responsibilities, acts, and omissions of Hibbits and Lebb described above, the acts and omissions of Hibbits and Lebb constitute the use or employment by Hibbits and Lebb of deception, unfair practice, and the concealment, suppression, and omission of material fact in connection with the sale or advertisement of merchandise, as defined in Mo. Rev. Stat. § 407.010, in trade or commerce.

41. Approximately 1,000 consumers made tuition payments to Linuxgruven. Few received a refund of or reimbursement for their tuition payment.

42. Many of those consumers made the tuition payments to Linuxgruven as a result of the concealment, suppression, and omission of material facts described above, and would not have enrolled in the Linuxgruven course had the concealed facts been revealed in the newspaper advertisements and/or the interviews with applicants, leading to the consumers suffering financial losses.

43. Because Hibbits and Lebb engaged in prohibited conduct as described above, they are personally liable under Missouri's Merchandising Practices Act for their conduct.

RELIEF

WHEREFORE, Plaintiff respectfully asks this Court enter a judgment against Defendants providing at least the following forms of relief:

A. Finding that Defendant James M. Hibbits and Defendant Michael J. Lebb each violated the provisions of § 407.020;

B. Permanently enjoining, pursuant to § 407.100, each Defendant, and Defendants' employees, agents, successors, assignees, and all other persons acting in concert or participation with either Defendant, from engaging in unlawful merchandising practices, including prohibiting each Defendant from soliciting students for training courses without full disclosure of all material terms, including the likelihood of employment after completion of the training and, if true, the fact that the person soliciting the consumer is being paid on a commission and is not a true human resources department interviewer;

C. An Order, pursuant to § 407.100, requiring Defendants, jointly and severally, to pay restitution in an amount to compensate any and all persons who have suffered any ascertainable loss, including, but not limited to, any moneys or property, real or personal, which Defendants may have acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful under Chapter 407. Such restitution order shall require Defendants to pay the ordered restitution to the Missouri Merchandising Practices Restitution Fund;

D. An Order requiring Defendants, jointly and severally, to pay, to the credit of the Missouri Merchandises Practices Revolving Fund, an amount equal to ten percent of the total restitution awarded, pursuant to § 407.140.3;

E. An Order requiring Defendants, jointly and severally, to pay, as a civil penalty, the amount of One Thousand Dollars (\$1,000.00) for each and every violation of § 407.020, pursuant to § 407.100.5, including a civil penalty of \$1,000 for each person who paid the tuition fee (ranging from \$2,500 to \$3,150) and for the placing of each newspaper advertisement described in this petition;

F. An Order requiring Defendants, jointly and severally, to pay to Plaintiff an amount equal to the costs of investigation and prosecution of this action, including the reasonable market value of attorney and investigator time incurred in investigation and prosecution of this action and the costs of administering the restitution fund for payments to consumers as requested above, as provided for by § 407.130;

G. An Order requiring Defendants, jointly and severally, to pay all court costs incurred in this cause of action, as provided for by § 407.130;

H. Any and all such additional and further orders as this Court deems just or otherwise appropriate.

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